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NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1982

STATE OF ALABAMA,

PETITIONER

VS.

CHARLES BRACEWELL,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

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QUESTION PRESENTED

DOES THE DECISION OF THIS HONORABLE COURT IN BECK V. ALABAMA (447 U. S. 625 [1980]) REQUIRE THE AUTOMATIC RETRIAL OF ALL CASES TRIED UNDER THE ALABAMA CAPITAL PUNISHMENT STATUTE PRIOR THERETO WITHOUT REGARD TO THE EVIDENCE?

PARTIES

In the Circuit Court of Covington County, Alabama, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: The State of Alabama, Petitioner herein and Charles Bracewell, Respondent herein.

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OPINIONS BELOW

The opinions or order of the court of Criminal Appeals of Alabama is not as yet reported but will be reported as;

Bracewell v. State, (Cr. App. Ala., 1981) _____So. 2d _____.

The same is submitted herewith as Appendix "A". hereto.

Writ was denied by the Alabama Supreme Court without an opinion.

JURISDICTION

The order of the Supreme Court of Alabama denying certiorari was issued December 11, 1981, and this petition is filed within sixty (60) days of said date:

The jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

> "...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which sahll abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law..."

STATUTORY PROVISIONS INVOLVED

Code of Alabama, 1975, Title 13, Sections 13-11-1 through 13-11-9.

STATEMENT OF THE CASE

Respondent, Charles Bracewell, was convicted under Alabama's Death Penalty Statute of the robbery-intentional killing of Rex Carnley and sentenced to death. The conviction and sentence was affirmed by the Alabama Court of Criminal Appeals in an opinion issued January 30, 1979. The Alabama Supreme Court,on petition, remanded the case to the trial court to determine whether or not a juror in the case, in spite of her attitude towards capital punishment, could have considered the evidence and instructions of the court and returned a verdict of guilty if warranted. The Alabama Supreme Court further held that the sentencing authority misapplied an aggravating circum-

stance and should reconsider its finding that the capital felony was committed for pecuniary gain. Application for Rehearing was overruled September 7, 1979. The case was remanded by the Court of Criminal Appeals on October 16, 1979. Upon the trial court's actions in this regard, the Court of Criminal Appeals affirmed again in an opinion dated January 22, 1980.

On March 6, 1981, the Alabama Supreme Court reversed and remanded on the authority of Beck v. Alabama, 447U. S. 6251, (1980). Then on April 10, 1981, the Court issued an order overruling application for rehearing, withdrawing its opinion of March 6, 1981, and reversing and remanding the case to the Court of Criminal Appeals for further consideration in light of Beck, supra. The Court of Criminal Appeals reversed and remanded the cause to the trial court on August 4, 1981. Application for Rehearing

was overruled on October 6, 1981.

On October 20, 1981, the State filed a petition for writ of certiorari in the Alabama Supreme Court. That writ was denied on December 11, 1981, without opinion. To that denial, and the issues raised herein this petition is filed.

STATEMENT OF THE FACTS

The facts concerning this crime indicate that on the evening of August 14, 1977, the deceased, Rex Carnley drove from his home near Opp. Alabama, to his own store nearby. Mr. Carnley went to the store for the express purpose of spending the night there because he had suffered numerous burglaries there in the recent months. He locked himself inside the store.

The body of Carnley was discovered the next morning, August 15, 1977, inside the store. Carnley's billfold and cash were missing. Testimony revealed that

Carnley had died as a result of multiple gunshot wounds to the head. Nine wounds were found in the body.

Charles Bracewell was arrested in November, 1977, on an unrelated charge. Having been fully advised of his constitutional rights and indicating he understood those rights he made a confession. That confession indicated that he and his wife had gone to Rex Carnleys store on the morning of August 15, 1977, with the intention of robbing him. They both were allowed in the store where Charles Bracewell shot him several times in the face. Before taking his money Charles Bracewell and his wife took turns firing shots into Carnley's body.

Numerous other statements, communications and correspondence was made by Bracewell which indicated his involvement in this crime. These included further confessions to authorities, letters to

his wife and statements to people not connected with law enforcement.

Certain evidence was retrieved as a result of Bracewell's confession. Scientific bullistic tests were run which not only substantiated Bracewell's confession but also his involvement in the crime.